IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.8001 OF 2004

Mr Namdeo Atmaram Bhoir, .. Petitioner

Vs

Mr Shantaram jagannath Kadu & Ors. .. Respondents

Mr. V.S.Gharat, for the petitioner.

Mr M.A.Chaudhary, for respondent nos 1 and 2.

CORAM : D.B.BHOSALE,J.

DATE : 5th October, 2004.

PC:

1. Heard the learned counsel for the parties.

2. This petition is directed against the order dated 16.9.2004 passed below Exhibit-140 in Regular Civil Suit No.13 of 1994, by which it has been rejected by the learned Judge. The application Exhibit-140 was filed by the petitioner- defendant no.2 against the order by which his prayer seeking permission to cross examine defendant no.1 has been rejected. It is clear from the material placed before me that several opportunities were given to defendant no.2 to cross-examine defendant no.1, but he did not avail the same on the ground that his Advocate was not available for cross-examination. The facts further reveal that earlier defendant no.1 had filed a suit bearing Regular Civil Suit No.25/1989

against defendant no. 2 seeking declaration in respect of the same property which is involved in the instant suit and that suit was decreed against defendant no.2. Thereafter, the brother of the petitioner-defenant no.1, who was not party in the earlier suit, filed the instant suit seeking similar relief against defendant no.1. Keeping that in view and considering the conduct of the petitioner, in my opinion, no interference is called for in the order impugned in the instant petition. The writ petition, therefore, fails and is dismissed as such.

(D.B.BHOSALE, J.)